

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12239 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GONDHIYA M LALJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR MANOJ N POPAT for Petitioner

MR ASHOK PATEL for MR JD AJMERA for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/08/1999

ORAL JUDGEMENT

1. The petitioner is praying for the directions to the respondents to appoint the petitioner on the post of Field Worker pursuant to her selection as and when vacant post is made available with the respondents.

2. Facts of the case in brief are that the

petitioner was called for oral interview on 19.8.1987. It is the case of the petitioner that the respondent vide its letter dated 11.8.1987 (that seems to be incorrect date) informed the petitioner that her name is there at serial No.8 in the select list. The reference has been made to the letter of the respondent dated 8.12.1989 informing the petitioner as and when the post will be available she will be given appointment. Then there is a long gap and on 12.4.1994 the petitioner made representation to the respondents, that has been replied under the letter dated 19.7.1994 in which it is informed that the respondents have decided to fill up the post amongst the candidates of the Multipurpose Health workers. Hence, this Special Civil Application.

3. Learned counsel for the respondents has filed reply to the Special Civil Application.

4. Learned counsel for the petitioner contended that whole approach of the respondents is perverse. He made reference to the document letter of the Commissioner, Health & Medical Services and Medical Education dated 27.3.1989 to the District Health Officer and contended that the post of Field Worker is now to be taken as Multipurpose Health Worker.

5. It has next been contended that the petitioner was selected, and she acquired a right to get appointment and that has not been given to the petitioner by the respondents though all the stages the petitioner was given out that as and when vacancy is there she will get appointment.

6. Learned counsel for the respondents on the other hand contended that merely because the name of the petitioner is there in the select list, she does not acquire indefeasible right of appointment on the post. Respondents are within their competence not to give appointment to the petitioner for the cogent and justified grounds which have been given in reply.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. First of all, after more than 12 years of interview and preparation of the select list, it is not fit case where this court may issue a writ of mandamus of the nature as prayed for by the petitioner. The petitioner has approached to the court after about seven years of the preparation of the merit list. In the meanwhile many of the candidates would have been

appointed as Multipurpose Health Workers. Merely because on one fine morning something has come from the respondent or by filing repeatedly representations cause of action which had accrued to the petitioner in the year 1987 can not be permitted to be now agitated in the year 1994 in the court.

9. It is no more res integra that merely because the name of the candidate is there in the select list, he/she does not acquire indefeasible right of appointment. Leaving apart that there is inordinate delay in filing of the Special Civil Application, respondents have all rights to give out reasons for non-acting upon the select list and if this court is satisfied, it may decline to issue a writ of mandamus of the nature as prayed for by the petitioner in this Special Civil Application. Reply to the Special Civil Application is filed on 21.1.1995. I do not find on the record of this Special Civil Application rejoinder to the reply filed by the respondents. The averments made by the respondents in reply to the Special Civil Application stood uncontroverted by the petitioner. Reliance placed on the document letter dated 27.3.1989 is hardly of any help to the petitioner as the respondents have abolished the posts of Field Worker and there is no question of appointments of the persons on these posts. Policy has been given out by the State Government vide notification dated 5.7.1988 for appointments on the post of Multipurpose Health Worker and the posts of Field Worker as what the learned counsel for the respondents contends, is to be taken as Multipurpose Health Worker. When this post now is converted in the Multipurpose Health Worker, naturally whatever the policy given out by the notification dated 5.7.1988 has to be followed for making appointment and this a good and cogent ground for not acting upon the select list prepared in the year 1987. The petitioner has though made reference to the notification dated 27.3.1989, but it is nowhere stated and shown that the resolution of the Government dated 5.7.1988 is superseded. From this document of 27.3.1989 it is come out that now the post of Field Worker will be known as Multipurpose Health Worker and naturally it has to be filled in as per the Government resolution dated 5.7.1988. None of the legal or fundamental rights of the petitioner are infringed.

10. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

(S.K.Keshote,J.)
(pathan)